

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

July 3, 2008

A meeting of the Board of Environmental Protection was held on Thursday, July 3, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Matt Scott, Lissa Widoff and Nancy Ziegler

Absent: Sue Lessard, P. Andrews Nixon

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| <u>Staff:</u> | Office of the Commissioner | Pete Carney |
| | Bureau of Air Quality | Bryce Sproul |
| | Bureau of Air Quality | Marc Cone |
| | Bureau of Land and Water Quality | Richard Baker |
| | Bureau of Land and Water Quality | Tim MacMillan |
| | Bureau of Land and Water Quality | Mike Mullen |
| | Bureau of Remediation & Waste Management | Scott Austin |
| | Bureau of Remediation & Waste Management | Stacy Ladner |
| | Bureau of Remediation & Waste Management | Scott Whittier |

Others: David P. Littell, Commissioner
Jan McClintock, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 1:00 p.m.)

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I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Regional Greenhouse Gas (RGGI): Agency heads of the ten states participating in the RGGI initiative met in Vermont. All ten states that will participate in the September carbon allowance auction are in the final stages of their auction rule adoption efforts. During the meeting several matters were resolved which marks the positive working relationship among the twenty environmental and energy commissioners and staff in the RGGI states and the progress on regional greenhouse gas emissions reduction initiatives.

Long Creek Watershed: The Conservation Law Foundation (CLF) has petitioned EPA for residual designation under the Clean Water Act. The City of South Portland is working with the DEP to coordinate a stakeholder group to work on an initiative to clean up the Long Creek watershed. The Department has been working with the City of South Portland and CLF toward a cooperative designation. An update on the progress of this initiative will be scheduled at a future time.

East Pond Remediation: The Department previously briefed the Board on a nutrient management initiative that included the removal of fish to restore water quality to East Pond. Data is still being collected on this effort and the DEP will report back to the Board on its findings.

Ocean Renewal Power Company (ORP) – ORP is a company planning to pursue tidal power generation in the area of Cobscook Bay // Western Passage. The company has provided the Department with a report summarizing its pilot study. Copies of this report will be forwarded to Board members.

Commissioner Littell provided a brief summary of the 123rd Legislative Second Session.

- LD 1945 – The legislation made minor changes to RGGI and authorized up to 2% of the CO2 allowances in the consumer benefit account to be transferred to a voluntary renewable energy set-aside account.
- LD 2283 - This wind power legislation is currently being implemented and the Board may be asked to consider projects on appeal.
- LD 2257 – The legislation established a uniform building and energy code which will address energy conservation. It established a board to develop the building code by 2010.
- LD 2255 -The legislation provides the Public Utilities Commission (PUC) with authority to designate new energy infrastructure corridors. The DEP will continue to evaluate these proposals utilizing current environmental review criteria.
- LD 2223 – The legislation expands the in-lieu fee compensation program to include vernal pool habitat, waterfowl and wading bird habitat and shorebird habitat.

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- LD 2048 – This safer chemical legislation establishes a process for the DEP and the Center for Disease Control to identify a list of chemicals of concern and restrict the sale of children's products containing priority chemicals, including potential bans. Any ban of toxic chemicals would involve BEP action.
- LD 2172 - Lead paint // EPA has promulgated a lead abatement and remodeling rule and DEP is charged to report back to the Legislature on the impact of the new requirements, as well as lead program changes at DEP, Dept of Human Services (DHS) and the Center for Disease Control (CDC).
- LD 2249 – The Legislation increases the fee for phosphorus compensation and requires (with a phase-in) that excavation in the shoreland area be overseen by a contractor certified in erosion control to aid protection of lake water quality.

Board member Hilton asked about the ability to calculate phosphorus for fee purposes. Commissioner Littell explained that the Department can calculate potential phosphorus impacts based on the square footage of surface areas (e.g. buildings and parking lots etc.). The fee increase will better compensate for environmental impacts associated with development.

- LD 2160 – The legislation requires disclosure of a malfunctioning septic system by a seller of property in a marine shoreland area (required by the Shellfish Act). Based on DEP's septic systems surveys 10 to 25% of bacteria on a beach are the result of a failed septic system.

QUESTIONS:

Board member Lissa Widoff asked about LD 1392 and the dioxin monitoring fee cap for paper mills prior to the change to \$10,000.

Commissioner Littell noted that the prior fee cap for the monitoring test was set at \$25,000. Maine requires dioxin monitoring above and below the mills. Monitoring results show that mills are meeting the standards, therefore, the Legislature opted to reduce the fee cap to \$10,000 opposed to eliminating it. With only one mill not meeting the above and below test, we anticipate that there will be 100% compliance in the future and the fee may be eliminated.

Note: At its August 7, 2008 regular meeting the Board voted to approve the July 3rd minutes with the inclusion of this notation to clarify the Commissioner's response to Board member Widoff concerning dioxin monitoring (above):

The cap for the dioxin monitoring test program remained at \$250,000.00 as opposed to the earlier reported \$25,000.00. With the submittal of all reporting data sets, the DEP has confirmed that all the mills have met the above and below test as opposed to the earlier report that one mill had failed.

Chairman Hilton noted the article in the Bangor Daily News concerning Central Maine Power's (CMP) 345 KV power line upgrade proposal and the respective filings with FERC, PUC and DEP.

Commissioner Littell explained that the Department has had some early discussions with CMP to ensure that field work is being done and will be adequate to process an application. DEP expects to review the proposed projects as two individual applications. DEP sought clarification on ISO funding for both projects.

Chairman Hilton commented that he understood ISO New England funding was at 85%.

Board member Matt Scott recognized the presence of Sam Zaitlin, a former Board Chair, in the audience.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: The Gulf Island Pond Oxygenation Partnership (GIPOP) has proposed a design to upgrade the existing bubbler in accordance with the conditions of the permits issued by the Board in the matter of the Androscoggin River appeal proceeding. The design was approved by Department staff. The new design will enhance the delivery of oxygen to the river at Gulf Island Pond.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. Minutes: June 5, 2008 (approval)

Board voted (7-0-1-2) on a motion to approve consent agenda item number 1 with the following modifications:

- (1) include **Marc Cone** as attending
- (2) change date in header ~~May 15~~, **June 5**, and
- (3) Commissioner Comments – B. Nagusky formerly from Growth Smart Board members *Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Lissa Widoff, Matt Scott and Nancy Ziegler* voted to support the motion. Board member *M. Wing Goodale* abstained. Board members *Sue Lessard and P Andrews Nixon* were absent.

2. R.J. ENTERPRISES, INC., Richmond – Administrative Consent Agreement (BRWM)

Board voted (8-0-0-2) on a motion to table action on consent agenda item #2 pending additional information concerning penalty calculations associated with multiple violations.

Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members *Sue Lessard and P. Andrews Nixon* were absent.

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3. MARITIME ENERGY, Central Coastal Maine – Administrative Consent Agreement and Enforcement Order (BRWM)
4. THE PIT LLC and MID COAST GRAVEL PRODUCTS, Waldo – Administrative Consent Agreement and Enforcement Order (BLWQ - Land)
5. JOE VILACHE, Raymond – Administrative Consent Agreement (BLWQ – Land)
Board voted (8-0-0-2) on a motion to approve consent agenda items 3, 4 and 5 as presented.
Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Sue Lessard and P. Andrews Nixon were absent.
6. MAINE ENERGY RECOVERY COMPANY, Biddeford – Administrative Consent Agreement (BAQ)
Board voted (7-1-0-2) on a motion to approve consent agenda item 6 as presented. The Board thanked the City of Biddeford for their comments concerning this consent agreement and encouraged the City to participate in the Department air emissions relicensing of this facility in an effort to address some of their reporting and monitoring concerns.
Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member Matt Scott voted opposed. Board members Sue Lessard and P. Andrews Nixon were absent.

III. Regular Agenda

1. CHAPTER 1262, MUNICIPALITY OF STEUBEN / AMENDMENT OF ZONING MAP (adoption) Staff: Richard Baker, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapter 1262, Municipality of Steuben which rezones lots 5 through 9 of the “Tide Mill at Dyer Harbor” subdivision from Resource Protection to Limited Residential. The Board voted pursuant to 38 M.R.S. Section 435-449, 5 M.R.S. Sections 8051-8064 and 06-096 CMR Chapter 1000.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Sue Lessard and P. Andrews Nixon were absent.

2. SMALL COMMUNITY GRANT PROGRAM / 2008 PRIORITY LIST (approval)

Staff: Tim MacMillan, Bureau of Land and Water Quality

The Board voted (7-0-1-2) on a motion to approve the 2008 Small Community Grant Program Priority List which provides grant assistance through state bond funds for the construction of individual and cluster septic systems or other wastewater treatment facilities to eliminate small-scale but serious water pollution problems. The Board voted pursuant to 38 M.R.S.A. Chapter 3 Section 411 and 06-096 CMR Chapter 529.

Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Ernest Hilton, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member Don Guimond abstained. Board members Sue Lessard and P. Andrews Nixon were absent.

3. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES / AMENDMENTS
(Adoption***)

Staff: Scott Austin, Bureau of Remediation & Waste Management

The Board voted (7-1-0-2) on a motion to approve Chapter 900, Biomedical Waste Management Rules amendments which: (1) eliminate outdated incinerator standards, (2) delete the term “disposal”, (3) establish an annual fee for biomedical waste generators based on average monthly generation, (4) incorporate reference to provisions of Chapter 2 regarding processing of applications, and (5) allow for shipment of sharps through the US Postal Service. Minor modifications were accepted by motion at the time of Board action and are identified below. The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B) and 1319(O)(3).

(1) *Section 11. A. (6)(b)* Generators producing 10 pounds or more, but less than ...

(2) *Section 17. A. Applicability* -- No person may treat ~~or dispose~~ of biomedical waste without first obtaining a biomedical waste treatment ~~or disposal~~ facility license from the Department.

(3) *Section 17. D.(4)* -- The biomedical waste treatment ~~or disposal~~ facility license.... ..

(4) *Section 19. B. Performance Standards* -- The applicant shall submit to the Department for review and approval a plan to perform...

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld voted opposed. Board members Sue Lessard and P. Andrews Nixon were absent.

INFORMATIONAL SESSION

Vernal Pool Habitat Protection

Staff: Mike Mullen, Bureau of Land and Water Quality

The information session on Vernal Pools focused on recent legislative modifications (LD 1952, PL 2007, Chapter 533). The Legislation:

- (1) Provides that DEP or Inland Fisheries and Wildlife may determine that a vernal pool is not significant if the pool dries up quickly (e.g. vernal pool is dry prior to July 15th in southern Maine, or July 31st in northern Maine);
- (2) Clarifies the rare species (e.g. ribbon snakes, turtle, swamp darner dragonfly and common darner dragonfly) to be considered in identifying vernal pools;
- (3) States that a significant vernal pool may not have a permanent flowing inlet or outlet.

Following the overview the Board conducted a question and answer session.

Next Regular Meeting –Thursday, July 17, 2008 – Holiday Inn / Ground Round

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